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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/473,194	12/06/1999	WAYNE M. SLAGLE		9698

7590 04/02/2002

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EXAMINER

CHIN, PAUL T

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 04/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

SL

<b>Office Action Summary</b>	Application No. 09/473,194	Applicant(s) Slagle
	Examiner Paul Chin	Art Unit 3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1)  Responsive to communication(s) filed on amendment filed January 15, 2002
  - 2a)  This action is FINAL.      2b)  This action is non-final.
  - 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle 185 C.D. 11; 453 O.G. 213.
- Disposition of Claims**
- 4)  Claim(s) 4-15 is/are pending in the application.
  - 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
  - 5)  Claim(s) \_\_\_\_\_ is/are allowed.
  - 6)  Claim(s) 4-15 is/are rejected.
  - 7)  Claim(s) \_\_\_\_\_ is/are objected to.
  - 8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11)  The proposed drawing correction filed on Jan 15, 2002 is: a)  approved b)  disapproved.
- 12)  The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- 13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - a)  All b)  Some\* c)  None of:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- 15)  Notice of References Cited (PTO-892)
- 16)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). 7
- 18)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19)  Notice of Informal Patent Application (PTO-152)
- 20)  Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Claim Rejections - 35 U.S.C. § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 4-6, 8-12, 14, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson [3,845,842].

Johnson [3,845,842] discloses an elevator apparatus comprising a tower assembly having vertical track (Fig. 5); a elevator or a container (36) which is a one piece construction; a plurality of upper sheaves (336); a plurality of lower sheaves (Fig. 6); a lifting cable (24); and an upper cylinder shaft (37) (Fig. 1) and a lower shaft (41,55) driven by a motor (86) to wind and unwind; a guide bar (7) (Fig. 6), and a turnbuckle (Fig. 5). It is pointed out that Johnson apparatus contains all the structural elements as broadly as recited in the claims while the intended use for dumb waiter is not patentably significant.

### ***Claim Rejections - 35 U.S.C. § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson apparatus [’842] in view of SOMFY’s Catalog, provided by the applicant.

Johnson apparatus [’842], as presented in section 3 above, contains all the structural elements as broadly as recited in the claims except having HIPRo LT50 motor. However, SOMFY’s Catalog shows a HIPRo LT50 motor and it would have been an obvious design choice to provide HIPRo LT50 motor on the Johnson apparatus [’842] as taught by SOMFY to employ the desired motor power.

5. Claims 4-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Del Rio [6,012,552] in view of SOMFY’s Catalog, provided by the applicant.

Del Rio [6,012,552] discloses an apparatus comprising a tower assembly (Fig. 1); a platform or a container (36); an upper sheave (30); a lower sheave (31); a lifting cable (32); and a cylinder shaft (Fig. 1) driven by a motor (Col 5, lines 5-35) to wind and unwind. Del Rio [6,012,552] does not show a multiple of the upper sheaves and the lower sheaves. Accordingly, it would have been an obvious design choice to provide a plurality of the upper sheaves and the lower sheaves instead of a single upper and lower sheaves on the Del Rio apparatus to provide a stronger power to wind and unwind.

Re claims 7 and 9, it would have been an obvious design choice to provide any kind of reasonable powered motor such as HIPRo LT50 motor on the Del Rio apparatus as taught by SOMFY to provide a suitable lifting power, and Re claims 9 and 15, it would have been design

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choice to make one piece construction of the container adapted on the Delrio apparatus to contain a liquid.

Re claim 12, Del Rio apparatus appears to show a turnbuckle (See fig. 3) adapted to allow to adjust the length of the cable.

It is pointed out that Del Rio apparatus contains all the structural elements as broadly as recited in the claims while the intended use for dumb waiter is not patentably significant.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CAR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CAR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Chin whose telephone number is (703) 305-1524.

ptc

PTC

March 19, 2002

  
3-25-02  
DEAN J. KRAMER  
PRIMARY EXAMINER